

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROGER A. LIBBY,

Case No.: 3:24-cv-00539-MMD-CSD

Plaintiff

Report & Recommendation of United States Magistrate Judge

V.

Re: ECF No. 1

CITY OF CARSON,

Defendant

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff, who is an inmate in custody of the Nevada Department of Corrections (NDOC) has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro se complaint (ECF No. 1-1).

I. IFP APPLICATION

A person may be granted permission to proceed IFP if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1).

The Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

1 “[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some
2 particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
3 (quotation marks and citation omitted). A litigant need not “be absolutely destitute to enjoy the
4 benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

5 An inmate submitting an application to proceed IFP must also “submit a certificate from
6 the institution certifying the amount of funds currently held in the applicant’s trust account at the
7 institution and the net deposits in the applicant’s account for the six months prior to the date of
8 submission of the application.” LSR 1-2; *see also* 28 U.S.C. § 1915(a)(2). If the inmate has been
9 at the institution for less than six months, “the certificate must show the account’s activity for
10 this shortened period.” LSR 1-2.

11 If a prisoner brings a civil action IFP, the prisoner is still required to pay the full amount
12 of the filing fee. 28 U.S.C. § 1915(b)(1). The court will assess and collect (when funds exist) an
13 initial partial filing fee that is calculated as 20 percent of the greater of the average monthly
14 deposits or the average monthly balance for the six-month period immediately preceding the
15 filing of the complaint. 28 U.S.C. § 1915(b)(1)(A)-(B). After the initial partial filing fee is paid,
16 the prisoner is required to make monthly payments equal to 20 percent of the preceding month’s
17 income credited to the prisoner’s account. 28 U.S.C. § 1915(b)(2). The agency that has custody
18 of the prisoner will forward payments from the prisoner’s account to the court clerk each time
19 the account exceeds \$10 until the filing fees are paid. 28 U.S.C. § 1915(b)(2).

20 Plaintiff’s certified account statement indicates that his average monthly balance for the
21 last six months was \$6654.22, and his average monthly deposits were \$343.92. As such, Plaintiff
22 does not qualify for IFP status.

1 Plaintiff's application to proceed IFP should be denied, and Plaintiff should be required
2 to pay the \$405 filing fee (consisting of the \$350 filing fee and \$55 administrative fee). Once
3 Plaintiff pays the filing fee, the court will screen his complaint pursuant to 28 U.S.C. § 1915A,
4 which provides that “[t]he court shall review, before docketing, if feasible or, in any event, as
5 soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress
6 from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. §
7 1915A(a). In conducting this review, the court “shall identify cognizable claims or dismiss the
8 complaint, or any portion of the complaint, if the complaint-- (1) is frivolous, malicious, or fails
9 to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
10 who is immune from such relief.” 28 U.S.C. § 1915A(b)(1)-(2).

11 **III. RECOMMENDATION**

12 IT IS HEREBY RECOMMENDED that the District Judge enter an order **DENYING**
13 Plaintiff's IFP application (ECF No. 1). Plaintiff should be given **30 days** from the date of any
14 order adopting this Report and Recommendation to pay the \$405 filing fee.

15 Plaintiff should be aware of the following:

16 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
17 this Report and Recommendation within fourteen days of being served with a copy of the Report
18 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s
19 Report and Recommendation” and should be accompanied by points and authorities for
20 consideration by the district judge.

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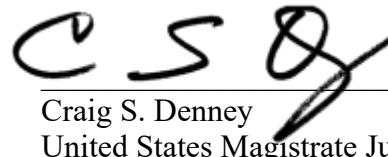
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1 2. That this Report and Recommendation is not an appealable order and that any notice of
2 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
3 until entry of judgment by the district court.

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5 Dated: December 17, 2024



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7 Craig S. Denney
United States Magistrate Judge

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